



Bureau of Consumer Protection
Division of Marketing Practices

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

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January 31, 2025

VIA CM/ECF

The Honorable Julien Xavier Neals
United States District Judge
District of New Jersey
MLK Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *Federal Trade Commission v. TheFBAMachine Inc. et al.*,
No. 2:24-cv-6635 (JXN) (LDW) (D.N.J.)

Dear Judge Neals:

Plaintiff Federal Trade Commission (“FTC”) writes to clarify a question raised at yesterday’s hearing. The Court indicated that the proposed consent order the parties are to file by February 3 should include language requiring Defendants to reimburse the FTC for the expenses incurred in deposing Defendants in connection with the FTC’s contempt motion. Ms. Robbins noted that the FTC may not be able to receive such funds but stated that FTC counsel would research the matter and update the Court.

We have conferred with our Office of General Counsel, which has confirmed that federal law prohibits the FTC from retaining any funds the Court may order to be paid to the agency for litigation expenses. Instead, in accordance with the miscellaneous receipts statute, 31 U.S.C. § 3302(b), such funds must be deposited with the U.S. Treasury.¹

The FTC’s priority in consumer-protection enforcement actions like this one is returning money to harmed consumers. Given the gross disparity here between the amount of consumer harm (at least \$18.8 million) and the extent of Defendants’ resources currently known to the FTC, any award of the FTC’s costs for the deposition is likely to reduce the pool of money available to compensate consumers at the end of this action.

¹ See Comptroller General to NLRB, 47 Comp. Gen. 70, No. B-161813, 1967 WL 1688 (July 24, 1967) (requiring that court-awarded litigation costs to NLRB be deposited with the Treasury, not retained by the agency, in accordance with the miscellaneous receipts statute); see also FMCSA-Retention of Court-Ordered Restitution, No. B-308476, 2006 WL 3956702 (Dec. 20, 2006) (analyzing exceptions to miscellaneous receipts statute).

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Accordingly, the FTC respectfully requests that the Court refrain from ordering reimbursement of the FTC's costs associated with the deposition of Defendants.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frances L. Kern". The signature is fluid and cursive, with the first name "Frances" written in a stylized script and the last name "Kern" in a more straightforward cursive.

Frances L. Kern
Attorney

cc: counsel of record (via ECF)